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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,204	08/09/2000	John W. Geurtsen	81527	4194

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EXAMINER

PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 03/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/634,204

Applicant(s)

GEURTSSEN ET AL.

Examiner

Sue A. Purvis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-12,15-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-12,15-20 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 18-20 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicant has amended claims 18-20 to include the feature that the contact plate has a pivot point “along its length”. The examiner was unable to find support for this feature in the specification. To overcome this rejection, the applicant can point out where the support occurs.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended claims 18-20 to include the feature that the contact plate has a pivot point “along its length”. It is unclear what the applicant is trying to claim here. Pivot point

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(129) is located at one end of the contact plate as seen in Figure 6. There seems to be no way to have the pivot point be "along its length". Clarification is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Good, Jr. (US Patent No. 5,188,696).

Good, Jr. discloses a labeling machine with a decorating unit in the form of a contact plate (62) which urges the label into contact with the article. (See Figure 13; Col. 4, lines 1-12.) The object is supported on station (22) during transfer. The plate is adapted to pivot as the label is urged onto the article.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 12, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. in view of Wochner (US Patent No. 3,709,755).

Good, Jr. discloses a labeling machine with a decorating unit in the form of a contact plate (62) which urges the label into contact with the article. (See Figure 13; Col. 4, lines 1-12.) The object is supported on station (22) during transfer.

The platen in Good, Jr. is not heated.

Wochner discloses a labeling system where press platens (22, 28) are heated. (Col. 3, lines 42-65.) Also in Wochner is a preheater (19, 24).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a heated plate, like the one disclosed in Wochner, in the device of Good, Jr. specifically when using heat transferable labels. Artisans with knowledge of labeling realize that there are many types of labels which can be used in labeling containers, labels with pressure sensitive adhesive and heat sensitive adhesive, are two of the most widely used types. If an artisan decided to use the device in Good, Jr. with heat transfer labels, it is with the purview of the artisan to heat the transfer platen in Good, Jr. as taught by Wochner.

Regarding claims 12-14, in addition to the heated platens, Wochner discloses preheaters located before the pressure plates (22, 28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the preheaters into Good, Jr. along with the press plate heaters. The combination of the two would ensure that the adhesive is heated sufficiently for label transfer.

Regarding claims 19 and 20, the platen in Good, Jr. is adapted to pivot.

9. Claims 4, 5, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. in view of Wochner as applied to claim 1 and 3 above, and further in view of Tagawa et al. (US Patent No. 6,402,868 B1) and Brandt et al. (US Patent No. 6,379,761 B1).

Neither Good, Jr. in view of Wochner teach having a rubber layer on the heated applicator, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a rubber layer, because it is well known that rubber helps to uniformly distribute the heat. This would help ensure the entire label is heated and the adhesive thereon are heated sufficiently. This is discussed in Tagawa. (Col. 4, lines 14-18).

Regarding claims 5 and 15, it is within the purview of one having ordinary skill in the art to use a rubber layer of 80 durometer silicone. The artisan would see the advantages of using that type of rubber. This is shown in Brandt et al. (Col. 9, lines 26-46.)

10. Claims 6-11, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. in view of Wochner, Tagawa et al., and Brandt et al. as applied to claim 5 above, and further in view of Morin (US Patent No. 5,817,210).

Good, Jr. in view of Wochner, Tagawa et al., and Brandt et al. does not disclose have a TEFLON fiberglass covering.

Morin teaches using a TEFLON fabric sheet (107), comprised of a 6 mil Teflon, fiberglass fabric whose purpose is to substantially reduce the tendency of the rubber pad (106) to stick to a transfer sheet. (Col. 4, lines 20-41).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a Teflon sheet, as disclosed in Morin, in the device of Good, Jr. in view of Wochner, Tagawa et al., and Brandt et al., because Morin teaches that such a sheet would reduce the tendency of the transfer sheet from sticking to the rubber layer on the peeler bar. The Teflon sheet in Morin is .23 inches, however it is within the purview of one having ordinary skill in the art to use a thinner sheet, because the artisan would know what thickness of

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Teflon would work in the device of Good, Jr. in view of Wochner, Tagawa et al., and Brandt et al.

Regarding claims 7 and 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the heat contact plate is capable of being heated to 450 degrees F, because it is within the purview of the artisan to know what temperature is needed to heat the adhesive on the label sufficiently to ensure the adhesive adheres to the article.

Regarding claims 8-11, these features are shown in the device of Good, Jr. as seen in Figure 1.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ewert et al. (US Patent No. 6,006,808) in view of Wochner (US Patent No. 3,709,755).

Ewert et al. discloses a label tamp for applying a label to an object. The contact surface extends almost the entire length of the label tamp.

The platen in Ewert et al. is not heated and a conveyor is not disclosed.

Wochner discloses a labeling system where press platens (22, 28) are heated. (Col. 3, lines 42-65.) The containers are conveyed to the labeling stations.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a heated plate, like the one disclosed in Wochner, in the device of Ewert et al. specifically when using heat transferable labels. Artisans with knowledge of labeling realize that there are many types of labels which can be used in labeling containers, labels with pressure sensitive adhesive and heat sensitive adhesive, are two of the most widely used types. If an artisan decided to use the device in Ewert et al. with heat transfer labels, it is

with the purview of the artisan to heat the transfer platen in Ewert et al. as taught by Wochner. Furthermore, conveyors are commonly used to put articles in the position to be labeled.

Response to Arguments

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection. The examiner inadvertently mislabeled the contact plate in Good as 61 when it was item 62 which is of particular interest here.

13. In response to applicant's argument that it is the rubber rollers in Wochner which contact the article, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The examiner has relied on Wochner to show it is known to use a platen to heat a label web. Wochner presses the label onto the article using a roller in combination with a heated platen.

14. In response to applicant's argument that Tagawa is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Tagawa discloses that rubber helps to uniformly distribute heat.

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15. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is 703-305-0507. The examiner can normally be reached on Monday through Thursday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



Sue A. Purvis
Examiner
Art Unit 1734

sp
March 16, 2003